

COMMISSIONERS APPROVAL

CHILCOTT *gc*

LUND *BL*

THOMPSON *at*

TAYLOR (Clerk & Recorder)

Date.....February 23, 2006

Members Present..... Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

Commissioner Lund attended a Fair Commission meeting during the morning hours and was not present for the following Request for Commission Action.

The Board met on a Request for Commission Action for the Boardwalk II Major Subdivision with one variance request. Present at this meeting was Planner Ben Howell, Developers Darrell and Molly Binkerd and Consultant Terry Nelson of Applebury Survey.

Ben presented a power point presentation, which included the Request for Commission Action as follows:



REQUEST FOR COMMISSION

ACTION

OG-06-02-197

Site Visit: February 21, 2006 @ 3:30 p.m.  
Meeting: February 23, 2006 @ 9:00 a.m.  
Request: To approve the Boardwalk II Major Subdivision with One Variance Request.

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## I. ACTION REQUESTED

This is a request from Darrell and Molly Binkerd, represented by Terry Nelson of Applebury Survey, to create the **Boardwalk II Major Subdivision with One Variance Request**.

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## II. BACKGROUND

The Boardwalk II Major Subdivision is a fourteen-lot subdivision located on approximately 16.60 acres, just south of the Town of Stevensville (see Map 1). The property has one house, which is located on proposed Lot 14 and will remain on the property. The proposed subdivision is located within the extraterritorial zoning area for the Town of Stevensville, about ½ mile south of Stevensville. The Union Ditch traverses through the property and the applicants are proposing to fence the ditch to meet County Standards. The subdivision is close to existing services and residential development. It is likely this subdivision will be annexed to the Town of Stevensville in the future, and with public water and sewer, this subdivision could accommodate a higher density.

In conjunction with the subdivision proposal, the applicant is requesting a variance from Section 5-4-5(a) of the Ravalli County Subdivision Regulations, to allow for a cul-de-sac on Red Willow Drive, a major local road.

*Staff recommended approval of the variance request and conditional approval of the subdivision proposal*



easement from the cul-de-sac to the property boundary is for future emergency access." The Board voted 6-0 to approve this motion.

*Comments from the meeting are contained in the record.*

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#### IV. PLANNING BOARD'S RECOMMENDED MOTIONS

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. That the variance request from Section 5-4-5(a) of the Ravalli County Subdivision Regulations, to allow for a cul-de-sac on Red Willow Drive, be *approved*, based on the findings of fact and conclusions of law in the staff report.
2. That the Boardwalk II Major Subdivision be *approved*, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report as amended herein.

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#### VI. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous.  
(*Effects on Agriculture*)

***Notification of Irrigation Ditch/Pipeline Easements.*** Within this subdivision there are irrigation easements. All downstream water right holders have the right to maintain and repair their ditches/pipelines and diversion structures whenever necessary to keep them in good condition. The filed subdivision plat shows irrigation ditches and easements on the property. The downstream water rights holders must approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch or pipeline. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easement to maintain the ditch or pipeline. (*Effects on Agricultural Water User Facilities*)

***Lots within this subdivision do not currently have the right to take irrigation water out of the Union Ditch located within the subdivision. Taking water without a water right for irrigation purposes is illegal. (Effects on Agricultural Water User Facilities)***

***Limitation of Access onto a County Road.*** A "no ingress/egress" restriction is located along the Eastside Highway frontage of the subdivision, excepting the approach to the internal road that is approved by the Montana Department of Transportation (MDT), which precludes vehicular access onto this State-maintained road. This limitation of access may be lifted or amended with approval of the County. *(Effects on Local Services)*

***Notification of Road Maintenance.*** Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal subdivision road and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for the internal road was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. *(Effects on Local Services)*

***Notification of Proximity to a Potential Dam Inundation Area in the Event of a Catastrophic Failure of the Burnt Fork Dam.*** The entire subdivision may be located within the dam inundation area for the Burnt Fork Dam. For more information please contact the Sunset Irrigation District (3221 Miller Hill Rd, Stevensville, MT 59870). *(Effects on Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

***Living with Wildlife.*** (See letter from FWP in application packet for the required provisions) *(Effects on Wildlife and Wildlife Habitat and Public Health and Safety)*

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community waste water treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

***Required Posting of County-Issued Addresses for Lots within this Subdivision.*** Lot owners shall post County-issued addresses at the intersection of the driveway leading to the primary residence and the

accessing road as soon as construction on the residence begins. *(Effects on Local Services and Public Health and Safety)*

**Primary Heat Source.** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

**Lighting for New Construction.** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spot lighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). *(Effects on Natural Environment)*

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. *(Effects on Public Health and Safety)*

**Maintenance of Fencing from the Union Ditch.** The owners of Lots 4, 5, 9, and 10 shall be responsible for maintaining the safety fencing located along the boundary of the lots. Each lot owner shall be responsible for maintaining the portion of the fence on their lot to meet the specifications in Section 5-6-2(b) of the Ravalli County Subdivision Regulations. *(Effects on Public Health and Safety)*

**Amendment.** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants listed above, that are required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The applicants shall build the internal subdivision road to meet major local road standards prior to final plat, except that a cul-de-sac will be allowed. *(Effects on Local Services)*

4. A public road and utility easement shall be shown on the final plat along the boundary between Lots 7 and 8 from the end of Red Willow Drive's cul-de-sac to the eastern property line of Boardwalk II. The easement shall be labeled as a public road and utility easement on the final plat. *(Effects on Local Services, Variance)*
5. Red Willow Drive shall be labeled as a privately-maintained road within a public road and utility easement on the final plat. *(Effects on Local Services)*
6. A stop sign shall be installed at the intersection of Red Willow Drive and Eastside Highway, reviewed by the Road and Bridge Department, and approved by the Planning Department prior to final plat approval. *(Effects on Local Services and Public Health and Safety)*
7. The applicants shall provide an approved MDT Approach Permit for the internal road accessing off Eastside Highway prior to final plat approval. *(Effects on Local Services and Public Health and Safety)*
8. The final plat shall show a no ingress/egress zone along the Eastside Highway frontage of the subdivision, excepting the approach for the internal road approved by MDT. *(Effects on Local Services)*
9. The applicants shall provide for an additional five feet of easement along the Eastside Highway frontage of the subdivision on the final plat. *(Effects on Local Services)*
10. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
11. Existing irrigation easements shall be shown on the final plat, as shown on the preliminary plat. *(Effects on Agricultural Water User Facilities)*
12. The applicants shall ~~provide evidence that an amount per lot (to be decided by the Planning Board) has been contributed to the Stevensville School District prior to final plan approval~~ place an encumbrance of \$250 per lot to the Stevensville School District upon first conveyance of Lots 1 through 13 on the final plat. *(Effects on Local Services)*

13. Prior to final plat approval, the applicant shall install a water supply consistent with the Uniform Fire Code, subject to the review and approval of the Stevensville Fire District, or ~~contribute \$500 per lot to the Stevensville Fire District and provide evidence of that contribution with the final plat application~~ shall place an encumbrance of \$500 per lot to the Stevensville Rural Fire District upon first conveyance of Lots 1 through 13 on the final plat. *(Effects on Local Services & Public Health and Safety)*
14. The subdividers shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Public Health and Safety)*
15. The applicants shall provide a letter of zoning compliance from the Town of Stevensville indicating that the final plat and any required documents are in compliance with zoning. *(Consistency with Zoning)*
16. To meet the requirement that each deed will contain a waiver of the right to protest future annexation to the Town of Stevensville, a document filed with the final plat shall state that each deed for each lot within this subdivision will contain the aforementioned waiver. A document indicating consent of the property owners, and any successors in interest of the subject property, to annexation shall also be filed with the Clerk and Recorder's Office. The applicant shall provide written evidence from the Town of Stevensville that they approve of the language included in these documents. *(Effects on Local Services and Consistency with Zoning)*
17. To meet the requirement that each deed will contain a waiver of the right to protest future annexation to the Town of Stevensville, a document filed with the final plat shall state that each deed will contain a waiver of the right to protest an SID to bring all infrastructure up to the current town standards at the time of annexation. A separate document shall also be filed with the City indicating the property owners, and any successors in interest, consent to future improvements. The applicant shall provide written evidence from the Town of Stevensville that they approve of the language included in these documents. *(Effects on Local Services and Consistency with Zoning)*

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**REMAINING ISSUES:** None.

**FISCAL IMPACT:** No extraordinary fiscal impacts noted.

**ATTACHMENTS:** Application package

Staff Report with attachments

Planning Board meeting minutes for the December 21, 2005  
plat evaluation and January 4, 2006 public hearing



Additional agency comments received after planning board hearing

STAFF: Benjamin H. Howell  
DATE: February 14, 2006

Public comment was then called for. Terry stated they agree with the Planning Staff and Planning Board's recommendation.

Public comment was closed. Board deliberation then took place.

Commissioner Thompson noted an error on the application portion of the paperwork on page two. Terry stated when they submitted the original application it was not known that a variance was required.

Commissioner Thompson also noted the 15 miles from the subdivision to the public safety services is incorrect and should be at a greater distance.

Commissioner Thompson asked if the fence would be built to County regulations. Terry noted they would follow the regulations with woven wire. Commissioner Thompson also noted the culvert area will need more attention with a top railing so a child could not fall into the ditch.

Commissioner Chilcott questioned the Fish Wildlife and Parks letter. Ben stated the original application was 16 lots rather than the 14 lots. Fish Wildlife and Parks noted their concerns would be the same if it were 14 or 16.

Commissioner Thompson stated the applicant complained about the subdivision next to him, but now he wants a subdivision and he hopes this subdivision will be as nice as the one next to it.

Commissioner Chilcott asked about the proposed 60' easement at the end of the cul-de-sac. Ben noted that was the correct location. Commissioner Chilcott asked about the Stevensville Zoning Regulations and the Ravalli County Regulations. He asked if a covenant had been done, would they have even needed a variance request. Ben stated a deed restriction would not be enforceable, therefore it was determined that a variance was in order. Terry stated this is zoned for commercial, but they are developing this into a residential area. The first 500 feet could be utilized as commercial. He stated the regulations do not specifically state they cannot end in a cul-de-sac. Ben noted that under the old road regulations: 5-4-1 can serve no commercial parcels, but under 5-4-2: major locals can serve commercial. Commissioner Chilcott stated his only concern is for someone to purchase Lots 13-14 wanting to put in a commercial endeavor; could that be limited to an option or tied to an extension of the road into another road? Terry stated this does not apply under today's rules. If this subdivision were under the new road

regulations it would not be an issue. He stated the old regulations did not fully explain this. The new rules correct that.

Darryl stated he, too, would require the driveways to be paved. He stated he wants to give the Town of Stevensville a right-of-way across the bridge to Baldwin Road. He will also establish where the homes will be built so in the future, when the proper connections for water and sewer are met, the lots will be able to be further subdivided. He stated 3-4 splits could be made on each lot. Commissioner Chilcott stated some people might not want these one-acre lots being divided into 1/3-acre lots. Terry stated one condition of the Town of Stevensville is that when these lots annexed, they have waived their right on the water, sewer and sidewalk and curb and gutter.

Commissioner Chilcott asked about Lots 11 and 12 and their unique configuration. Terry stated it was to keep the drain fields on each of those lots.

Commissioner Thompson made a motion that the variance request from Section 5-4-5(a) of the Ravalli County Subdivisions, to allow for a cul-de-sac on Red Willow Drive be approved, based on the findings of fact and conclusions of law in the staff report. And that the Boardwalk II Major Subdivision be approved, based on the findings of fact and conclusion of law in the staff report, and subject to the conditions in the staff report as amended herein; with condition No. 18 allowing for a 60' easement from the end of the cul-de-sac on Red Willow Drive to the eastern property boundary, allowing access for emergency vehicles, and the bridge to be constructed (which includes the proper fence and guardrails installed for the protection of the children) as per the engineers specification. Commissioner Chilcott seconded the motion and all voted "aye".

The Board complimented Planning and the developer in their presentation of a complete and thorough package.

In other business, the Board met with Interim Planning Director Karen Hughes, Planner Renee Van Hoven, Flood Plain Administrator Laura Hendrix and Civil Counsel James McCubbin for a Planning update. Numerous citizens were in the audience for this discussion. Commissioner Lund was now present for this meeting.

Karen presented the following information as attached, with discussion.

Karen noted that the subdivisions are increasing in their lot sizes, which calls for professional planners reviewing the development and intensity of the development. She stated they plan to start tracking their hours for the larger subdivision.

There are 45 active subdivisions, with fewer variance requests. The big struggle is to have the preliminary plats going out in a timely manner.

They have not had a secretary since October, so the staff is covering this. The hours of operation still open to the public at 1:00 p.m. They have approximately 11 office visits during the afternoon, and have reduced the back load due to the extra staff and office hours. Hiring, training, maternity leave, and leaves of absence have taken quite a bit of time. Karen gave kudos to the staff taking over roles and workloads. The new secretary is coming in on the 8<sup>th</sup> and a new planner arrives the first part of the month.

The timeliness of the road reviews is holding us up in the sufficiency review period. This needs to be resolved. We need two planning and zoning commission members and they need to have the Rippling Woods Voluntary Zoning District move forward.

Karen also addressed the zoning in regard to big box development. She stated the staff needs direction from the Commissioners in how to deal with this issue. Floodplain violations are being dealt with. Laura handles the administrative issues along with the floodplain issues. When the new secretary arrives it should alleviate some of Laura's time issues. Regulatory revisions require planning to address these revisions by October 1<sup>st</sup>. They need to devote staff time to this issue of road standards and design, as it is mandatory. MACo has not adopted these regulations and those regulations do not have any consideration from SB 116. She stated the Planning Board wants to address the use of pro rata funds for grader districts. This is on the agenda for March 1<sup>st</sup>. The other issue is the pro rata share for subdivisions with 21 lots or more, which will be addressed on February 27<sup>th</sup>.

In regard to the Old Corvallis Road Area 3 Plan, Karen stated the money set aside for this is mostly used up. They still need to devote staff time to the oversight of this. Karen asked if their department will be involved in this, or do the Commissioners want to address the review and scope of the contract with John Horwich?

Karen also re-addressed the letter from Lynn Nielson in regard to the final plat fees and taxes. Commissioner Thompson stated the final plat fee is to be paid and the court rescinded this. He should not be charged again. He stated it is the Board of County Commissioners decision to waive this fee. Lynn did pay the taxes, so that portion is handled. Karen stated the fee schedule is part of the subdivision regulations. Commissioner Chilcott stated this is not part of the agenda and asked if they can take action. James stated if the regulations require this, it might require a variance. Commissioner Chilcott suggested they do some research on this and he does not want to charge a fee for a variance. Renee stated the Board of County Commissioners has waived these fees in the past. Karen stated they would do some more research on this issue.

There was a large group of citizens in the audience. Commissioner Chilcott called for public comment.

Russ Lawrence, owner of Chapter One Bookstore. Part of a group Bitterroot Good Neighbors Coalition, in order to get regulations put into place in regard to big box stores. They were here to request that the Board of County Commissioners give priorities to this attached letter.

Lisa Wade, Director of Down Town Business Association, also presented a letter, which is attached.

Dan Severson of Stevensville of Valley View Drug: He is a long time Bitterrooter and owns Valley View Drug Store and represents the Stevensville Down Town Business Association. He supports the letter from the Hamilton Downtown Business Improvement District. He stated they must decide what they want their community to look like. Big box stores will change our valley forever.

Al Mitchell, Owner of the Paper Clip, felt the most devastating thing that could happen is to have the big box stores come to Hamilton. It would be economically devastating to the business and to the citizens.

Kirsten Lange stated the timeliness issue of the Commissioners to act. Consultants are already looking at sites and the Planning Staff is already overloaded. The big box stores can stay on Reserve Street in Missoula, and we can go there when we need. Otherwise the community should be encouraged to support those businesses and the families who those businesses support.

Kathryn Smith of Hamilton stated the impact on the local economy is negative. Their wages are lower, the impact on social services go up, food banks are stressed, because people are in jobs without health care and are at minimum wage. Downtowns usually close up. The non profits such as swim team, who march down Main Street, will be affected. Every aspect of our community will be affected. The Commissioners have an opportunity to make a difference by acting quickly.

Jill Davies of Sustainable Living Communities, grant for food co-op for local food, said there is a better market for local growers. They are trying to build and augment the local business. We do not need big box stores.

Alec Sutherland of Hamilton stated there are some social justice issues, and economic issues, and the top 20 of these box stores pay zero income taxes. The stores that close down will stop paying taxes, and from an economic standpoint (Source: Jim Elliot State Department of Revenue sources, using loopholes to avoid paying taxes). From a County government standpoint the County does not need to lose revenue.

Rick Furman of Hamilton supports the Bitterroot Good Neighbors Coalition. He prefers to live in a community that does not have a big box store.

Russ stated their coalition has endorsement from other community-based organizations and businesses. Studies show that the community-based organizations will be impacted in a negative manner. The property taxes are diminished 20%, and as others go out there is diminished tax revenue. Thus, there is community, economic and aesthetic considerations. That discussion has already been held in forming the growth policy, those statements calling for protection of downtown businesses and square footage and design standards. The voters have already expressed their desires. We need to beef up the design standards.

Jill asked what the process was. Karen stated this would be done through zoning, and it would affect the County, thus be part of a zoning resolution with regulations, and a protest period of 30 days. It needs legal review, since it is dealing with prohibitions. State law only allows this to be done by resolution, not ordinance. There is an interim zoning, but you must decide what your emergency is. And this is only a temporary stopgap measure and must have zoning to follow it. Interim zoning usually is for public health and safety issues. Karen stated the existing businesses are grandfathered in. She noted square footage is easier to deal with than design regulations. James stated the quicker you 'slap this together' the more un-intended consequences you might have and there could be legal challenges.

There was some discussion of other locations that do not allow box stores and those areas that allow the big box stores. Russ stated certain areas are regional shopping areas.

Tim Bielby owns a business in Hamilton. In Haley, Idaho they limited the store to 60,000 square feet. The box store came in and built two 60,000 square-foot buildings and put a breezeway in between the two. The corporations are smart and they have their own legal staff. They will steam roll over the attorneys we have and bog our system down to get their stores in.

Alec stated it is important for the Commissioners to be proactive and not wait.

Karen stated they would need guidance from the Commissioners. They can do more research and address it at the next update. Commissioner Lund asked Dan and Russ to put some information together in order to help Karen. Commissioner Lund stated she wants to get this done as soon as possible.

Commissioner Chilcott stated this issue could not be decided on today. We need to give time for everyone to have a chance to have an input. Commissioner Chilcott stated he is opposed to protectionism and we need to encourage free market, but he has heard some things that have merit and he wants to hear both sides. He stated on the street there may be a difference of opinion. He stated he does not want to slap something together and have unintended consequences. He stated he does not want to be bullied into anything first. He realizes the sense of urgency, but realizes they have some long-term planning issues that need to be addressed.

Commissioner Chilcott stated Karen should decide who should be involved in this issue and their first planning priority is compliance with SB116. Commissioner Chilcott also stated they need to justify the square footage issue. He stated he does not want to make an arbitrary and capricious decision. James stated he must review the challenges of any litigation for the interim zoning. Commissioner Lund stated it would be a waste of time to do the interim zoning; they need to focus on the real things.

Commissioner Thompson stated the citizens want to decide what the valley looks like and he appreciates Dan Severson here to represent the north valley. He also stated he would like to hear public comment from people who do not own businesses in the valley.

He stated he is not in favor of interim zoning, and he wants to make sure this is done correctly so it can not be challenged. He also stated the business association could provide a grant to help planning with this endeavor.

Karen stated if the Commissioners want to do this on their own, a consultant working on behalf of the County would work fine. It would then need legal review. The next meeting will be Tuesday, Feb 28<sup>th</sup> at 2:00 p.m.

In other business the Board met to discuss and make a decision on the Event Pavilion Center naming rights and financing. Present at this meeting was First Interstate Bank Manager Monte Drake, Fair Manager Gary Wiley, and Internal Auditor Klarryse Murphy. Klarryse stated if the pavilion was leased more than 10% to private organizations the County can not obtain a tax exempt status. 90% of the rentals would have to be to non profit organizations and the Forest Service is not included in this grouping. In that regard, the County can not take the first option presented in a bid form from First Interstate Bank. Rather, the County would need to take option number three. Gary stated with this IRS Tax code rule, he would have a difficult time leasing out the facility.

Option four allows naming rights, but increases the loan by \$10,000.00, due to the tax exempt status. James stated Attorney Mae Nan Ellingson, not only has found IRS Tax Code that impacts this financing, but she indicated she is not sure Montana Law will allow the County to allow naming rights. James reviewed the law and interprets the law to allow the County the ability to have the naming rights.

Option No. 4 is at 1.25% plus the Federal Home Loan rate, which brings the interest up to an approximate rate of 5.3%. Discussion included the fact that any option chosen by the Board is still lower than any bid received from the other vendors in July.

Commissioner Lund made a motion to accept First Interstate Bank's naming rights for the new pavilion at Option 4, with a 10-year option with the Federal Home Loan rate, with the contract being reviewed and approved by the County's civil counsel and the attorney for the First Interstate Bank. Commissioner Thompson seconded the motion. Discussion: there will not be a bank-qualified letter, so the Resolution prepared by Mae Nan is not necessary. This is a single-purpose loan and James concurred a Resolution is not necessary. All voted "aye".

This loan will be done on a one disbursement and that will lock in the lower rates, with payments on June 15<sup>th</sup> and December 15<sup>th</sup>. The first payment will be on December 15, 2006.

In other business the Board met to discuss and make a decision on the fair market value of the airport leases. Present at this meeting were numerous airport vendors and Airport Board Members Dave Hedditch, Fred Haaskamp and Carl Fox, Jim Trowbridge and Airport Manager Red Caldwell.

Also present at this meeting was Civil Counsel James McCubbin. James stated he had been gone and had asked in a memo that this meeting be rescheduled. He has done some research and, due to his absence, has not completed this research. Commissioner Thompson addressed George's memo in regard to the fair market value issues, utilizing the word "might". He also addressed the \$33,000.00 loss that George stated the airport is having, which is incorrect. Commissioner Thompson stated George has not looked at the aeronautics money that goes into the general fund. He also stated the airport is self-sustaining. Commissioner Thompson addressed the \$.48 fee for development fee, the \$.07 fee for leases, and all of that money does not go into the 2170 fund, some goes to general fund. As Commissioner Thompson reviewed the leases, there was some possibility of utilizing a CPI, which has been 2.45% within the past 10 years and that would account for \$.02 cents. Therefore, in all fairness the rate should be raised by \$.02 cents, which would be \$.09 cents. He stated a public hearing should be held to take input on this fee/lease increase.

James stated he would like this meeting rescheduled, as he wants to complete his research and have George present at any following meeting. Commissioner Lund stated they can move forward with the public hearing. She also stated this issue is clear to her and agrees with Commissioner Thompson. They probably should take the money from the general fund and put it back into the airport fund, as it is airport money. She stated she feels comfortable raising the rate to \$.09 cents if that is what the public hearing bears out.

James stated his research is based on the FAA compliance. Right now the FAA policy is in limbo and he needs to determine what that is in regard to how the lease rate is set. Part of the federal regulations have been repealed and it is a complicated question on how they charge those lease rates. Commissioner Lund felt the Board of County Commissioners makes the final decisions, and after reviewing the letter from Joelle Briggs of the F.A.A. she feels more comfortable. James stated Joelle is citing the 1996 Federal Code that has partially been repealed.

Commissioner Thompson stated the rate fees must be reasonable, cost standards and the airport proprietors can not base the airport land on fair market value, and this is a Board of County Commissioners' decision and this is not a County Attorney decision. He stated he is not giving away his elected official responsibility to George Corn. He appreciates George's concern, but again this is the Board of County Commissioners' decision.

Commissioner Lund asked does the CPI relate to the development fees. Red said it should not and Ravalli County is the only County that utilizes development fees.

James stated Commissioner Thompson is citing to the introduction to the policy and that has been stricken by the court. James also stated the County might not be compliant with FAA regulations, or Montana Aeronautics. Commissioner Chilcott stated this is the Board of County Commissioners' decision, but he does not want to arrogantly attach his authority and put in jeopardy any FAA funding. He stated these rates are consistent with statewide airports so he is not feeling the exposure to any risk. The state has not taken

any action against any Commissioners in fulfilling their statutory obligations. Commissioner Chilcott asked what the county's exposure was. James said they are low obligations but you are not fully funding many of the County offices and under Montana Law you might not be meeting the obligation to fair market law. Commissioner Chilcott stated by moving forward on the CPI of what currently exists, of \$.02, and public hearings, it does not preclude us to take further action? James said if you are going to do it, do it right the first time. Commissioner Chilcott stated there should be no heartburn from anyone since the \$.07 has been in effect for over 13 years. Therefore, he has no problem proposing an increase based on the CPI, but he does not want to take anything out of the taxpayers' pockets for these airport issues. He concurs with holding a public hearing; however, he would like to have James continue his research.

Commissioner Lund said in light of everything, James is needed on other important issues. This is something we have 'beaten on for over five years'. James stated even if he continued it will not be his top priority.

Commissioner Chilcott asked what kind of airport revenue is generated: \$16,000 by the leases.

Commissioner Thompson said move forward with a public hearing. James has a lot of work and he feels they are in line with other airports and this airport is self sustaining, unless there are special projects on different years. James needs to spend his time on other issues. If, during the public hearing they need more research, they can do so at that time. Commissioner Lund asked should we revert back to the CPI lease. Commissioner Thompson said if we look at the relevant market like George says then yes, these fees and a CPI increase is based on the relevant market, aeronautics based. He also agrees that the rates need to be set according to Ravalli County, but we can look at the other Counties that are close to us in airport size. Commissioner Thompson stated if they leave the fair market value, then it leaves that to someone else's judgment. Any appraisal would be \$6-\$8,000.00, which is not a small amount.

Dave noted John Styba recognizes one of the best appraisers in the State is in the room: that is Airport Board Member Jim Trowbridge. Jim stated he would review this as County land, compatible use (and it is restrictive use) and to find any comps. He stated the comp data would have to come from other airports. This is not like Highway 93, where you are able to construct anything you want.

Commissioner Lund made a motion to instruct James to stop his research at this time, send a nice letter to Pilots information but not go forward on this research, use the CPI lease figured with COLA's every five years, and schedule a public hearing on March 22<sup>nd</sup> at 9:00 for a proposed \$.09 per sq. foot per year and commercial rate of \$125.00 per year. Commissioner Thompson said part of the motion is ministerial and we can simply instruct James to stop his research and send a letter. The first sentence of the motion was struck, about research. Commissioner Thompson seconded the motion. Discussion: Commissioner Chilcott stated this would be a 29% increase to get \$.02. Wendy



stated \$.07 was the highest in the state. Commissioner Lund said you can bring any comments forward at the public hearing. All voted "aye".

Commissioner Chilcott felt the research should still be done. The pilots came up with some good questions and those questions should be answered. Dave asked where in Montana Code states the lease is in violation. Ron Kullick stated he asked James for the information prior to the Feb 13<sup>th</sup> letter written by Pilots Assoc. They should have done the research before the letter was written by the attorney. They are trying to be helpful to the County Attorney. He still does not have any response to his letter. The District of Columbia did not overturn any case law. Any time the County Attorney presents you with an opinion, he should have cited the rise to those legal concerns, such as case law. James stated he outlined that in prior lease changes.

The Board also met to discuss and make a decision on phase 2 of the remedial investigation (fuel spill) at the airport. Also present were members of the Airport Board. It was noted that the Fire Marshall will not sign-off on the Phase II remedial investigation because he indicated it was not his issue. Red stated he is back where he was 6-8 months ago. The Fire Marshall says they have to comply with the rules that were in place when the tanks were installed. Red stated it is not in compliance; the loading rack is not in place; it is too close to the containment facility (need 25' between the tanks and loading rack); the electrical service to the pumps was inside the containment area, (the new plan moves it outside). Red stated he will not endorse it because the Fire Marshall will not sign off. Steve stated the Fire Marshall will not sign off on any plan. It is the installers' responsibility to make sure it is compliant. If it is not compliant the Fire Marshall does not have an enforcement agency. The response to the Fire Marshall has been nothing from Land and Water, who is the consultant. Steve stated they moved the pumps over to comply. In regard to the loading rack there is no loading rack requirement by FAA. They have a dirt dike out front, which has been engineered by Land and Water. They are willing to put their name and seal of approval on this. James stated the original violation letter from the Fire Marshall addressed the 25', so it would be hard to ignore that letter, even if they are not pursuing them for violations.

Attorney Dick Weber was now present, representing Steve Wolters. Steve stated they are not a loading rack, so the 25' does not pertain. Dick stated the loading racks have the top loading pipes, and they use them for overflow. Steve's system is not set up in order to create an over flow. Land and Water addressed the electrical inside the primary, the loading rack, etc., and according to Charlie Vadheim of Land and Water, this proposal is engineered within the code. Commissioner Chilcott stated this is similar to roads and if an engineer signs off, then they accept the liability.

Red stated they are also planning on paving that area. The facility needed to be fenced according to the Fire Marshall. Commissioner Chilcott asked how the fuel farm ended up where it is. Bill Stewart stated they looked at a site at the other end, but no one liked that, so Schrucekengust got permission to put it by his building. We wanted it to be remote and allow both entities to use this, and away from any traffic, but the Airport Manager

directed the tanks to be placed in their current location. Mrs. Stewart stated the tank was there long before the Forest Service building.

Theresa Blazicevich worked for an underground tank farm for 10 years. She stated for the last 10-15 years all bulk off-loading does have containment under their truck and under their tanks. The SPCC plan requires containment, but they do allow for dirt containment, but that is a bad idea with the shallow ground water. It needs to be metal containment. Cenex did some bulk loading along the high line. The Fire Marshal should be helping along with EPA.

Dick produced a letter from the State Fire Marshal, which addressed the compliance of the uniform fire code. Specific issues are the pumps and electrical inside the dike area, but that has been changed. Other issues are the spill containment area be approved, padded and sloped to loading vehicles. He also addressed a fencing requirement (the actual fencing requirements are unknown). Red stated it should be around the entire area.

James stated Red should call the Fire Marshal so we can try the best we can to comply, but if an engineer shows compliance, and the location is acceptable to the airport, then we need to move forward on this.

Steve stated Land and Water addressed the fencing issue in regard to security. With the electrical valves, the tanks would not be compromised. Steve noted that he did not lose a drop of fuel last year because of the check valves. Steve also noted while he located the tanks where the ALP designated, it also denotes that is where the future fuel farm will be located. At that time there was no Forest Service building or any road.

James noted the tanks are in concrete containment, but if the county wants to move the tanks there would need to be more analysis. If they are not moved, a solid drain area should be installed. He noted that appeared to be the appropriate area. James noted the Commissioners should obtain the Fire Marshal's input or Land and Water's sign off.

Steve noted the tanks are 20' from the road. James stated if the rules are more stringent than the 1997 law then there should be no problem. Steve stated the pumps follow the 1997 law, the dike follows the SPC plan, but the dike is not in yet. Commissioner Chilcott asked if it would be a hardship to have the fuel truck loading and unloading away from the road (to the south side). Commissioner Thompson stated the trucks can not back up, so you would have to have a loop road.

Red stated he has a plan for that road. He checked with other drivers and he can not have any buildings within 50' of the tanks, so there is room. The county has some gravel and grading could alleviate some costs for Steve. Commissioner Lund stated she would rather see the road to the south so the trucks are not parked on or near the road where other traffic occurs.

Dave asked if a second fuel farm would share the containment area. Red stated it should and therefore the costs should be shared. James stated a rebate of some sort could be developed for future fuel farm vendors.

Commissioner Chilcott asked Theresa if the capacity would change. Theresa stated the capacity for the above ground fuel tank would change, but not the spill pad as long as the pad would handle the spill from one load. Commissioner Chilcott stated 'if he was in North Star's shoes he would be hesitant to put in a dual loading dock for future competition'. James stated they can require a lease with these requirements to be completed. If another facility comes in, a rebate would be required. Commissioner Lund stated the user count bears some responsibility for the cost of the road.

Red asked if fencing is a requirement. Commissioner Chilcott stated that should be addressed by the engineer. Red stated there will be some traffic and the fencing requirement would include the containment area. Commissioner Chilcott stated the concrete will stop the vehicle, not the fence. Red stated he is referring to potential vandalism. Commissioner Chilcott asked if the appropriate security measures have been put in place for the valve security and the history from Steve shows that it has been successful.

Theresa stated the Fire Marshal will require fencing of both facilities to keep people out. James suggested they move the loading area to south and re-engineer the area. He also suggested the Commissioners attempt to have the Fire Marshal sign off on the plan and if he does not, see if the engineering firm of Land and Water will sign off.

James stated the only issue is to address the road construction standards and details of the lease agreement which will include a rebate issue (agreed to be at flat 50%). The Board concurred a gravel road could be put in.

Steve stated he would rather leave this where it is, as it would be less expensive for him. Commissioner Lund and Commissioner Chilcott felt the county should pay for the road because the change is being required by the county.

In summary it was agreed the county will approve of a lease agreement with North Star for this approximate location, provided that the loading area is moved to the south side of the tanks with additional containment; try and obtain the Fire Marshal's approval or certification by the engineer. At the time of installation of the loading pad, the county will construct a through road so the trucks do not have to back up. The lease will impose a rebate program against anyone who uses this which is 50% of the actual costs (but not the extra containment, just moving the tanks and valves). Dick asked if the third party would be required to pay for some of the tank move. Commissioner Chilcott stated this is being done to accommodate fuel loading and yes the other vendor should be required to pay for the move of the tanks/valves. Commissioner Lund and Thompson concurred and further stated this will include the fencing as signed off by Fire Marshal and or engineer.

Commissioner Thompson made a motion to agree with the above summary. Commissioner Lund seconded. All voted "aye".

In regard to the phase 2 remedial investigation of the fuel spill at the airport, Steve stated PBS & J is waiting to execute the grant. Dick stated the grant could be applied for in both names, but should PB&S needs to know who to bill. Theresa stated the payment should be done jointly. The work plan (which includes the wells) needs to be done by February 28<sup>th</sup> or there will not be any funds. Commissioner Chilcott stated the contract should be executed by the county so this can be executed quickly. However, Steve already has the relationship with PB&S so maybe that would be easier. Steve stated he is happy to address this, but wants the responsible party to be addressed. He feels uncomfortable doing any more, as he just paid \$9,000.00, and the 'spot' is not related to anything he has done. He felt the county should pick up dealing with PBS & J from this point forward. Theresa stated the wells may not even address where the spill has come from. Steve stated he would be happy to continue working on this issue, but he does not want to be the responsible party. Dick stated the decision today does not preclude the county to move forward on a claim against Steve in the future, if the reason for the spill is due to Steve. Theresa stated the work plan needs to be done quickly, so funds are available. It was agreed the county will pay up to the \$17, 5000 and North Star will not waive any claims made by the county.

Theresa stated the wells have to be drilled. They will probably hit water at 10' but a well p.v.c. pipe needs to be done. She also stated Land and Water should be on site to watch the process.

Commissioner Lund made a motion to have Ravalli County work with PB&J in order to have the compliance of a work plan, attempt to obtain a grant plan and assume responsible party status in the agreement. Commissioner Thompson seconded and all voted "aye".

# Bitterroot Good Neighbors Coalition

Ravalli County Commissioners  
215 S. 4<sup>th</sup> St.  
Hamilton MT 59840

Dear Commissioners:

The Bitterroot Good Neighbors Coalition requests that you give the highest priority possible to the proposal for size and design standards for large-scale retail development in Ravalli County.

Ravalli County now has a Growth Policy built from the ground up, with general consensus on nearly every provision, passed by a roughly 2 to 1 majority by the voters. These are things that Ravalli County residents clearly want.

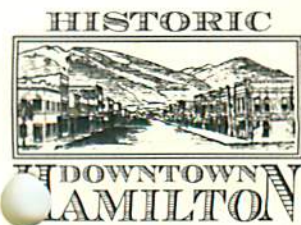
That Growth Policy encourages the development of our "Main Street" business communities, discourages strip development along Highway 93, calls for quality design standards, and specifically calls for "regulations to address large-scale retail development in terms of square footage and design standards."

This proposal is a means to address all of these goals, but only if you act quickly. We know that the County has already conducted one site evaluation for a possible "big-box" store, and more will be forthcoming if that turns out negative. We have a unique opportunity to offer something that is available in very few places in the country, a place where retail development is governed by the people who live here, not by out-of-state developers.

Please note that we're not saying "no" to anyone or anything—we're saying "yes" to all comers, but establishing rules that fit the wishes and desires of the people who live here now.

I encourage you to make this Board of County Commissioners the first such board in Ravalli County who acted to implement those parts of our Growth Policy that will have the greatest impact on our daily lives. Let's get to work together and give this our highest priority.

Russ Lawrence  
For the Bitterroot Good Neighbors Coalition



Downtown Hamilton Business Improvement District  
P.O. Box 481 • Hamilton, MT 59840 • 406-363-4229

February 21, 2006

To Whom It May Concern:

The Board of Trustees of the Downtown Hamilton Business Improvement District (DHBID) supports the efforts of the Bitterroot Good Neighbors Coalition to regulate large-scale retail development as called for in the voter-approved Ravalli County Growth Policy. Please refer to Action 6.2.6 which states: "Encourage the development of regulations to address large-scale retail development in terms of square footage and design standards".

The DHBID has a formal Mission Statement that outlines our goals. Those goals include:

- To preserve the historic and economic vitality of Downtown Hamilton.
- To promote the health, safety, prosperity, security, and the general welfare of those who work, shop in, visit, and enjoy Downtown Hamilton.
- To serve as a unified voice for the owners of properties and their tenants within the District.

The DHBID has worked very hard to improve Downtown Hamilton through direct investment in properties and projects. The Downtown District is the heart of our vibrant civic and economic community, and we are committed to keeping it that way.

We understand that Downtown Hamilton should be prepared to compete with large retail operations that may provide needed goods to Valley residents, but Super-Store operations (defined as retail spaces exceeding 60,000 sq. ft.) would have an enormous negative impact on our community. In addition to overwhelming the rural character of our Valley, Super-Stores would drain retail dollars from existing businesses while simultaneously increasing demands on infrastructure and social services.

It is well documented that even when businesses do not compete directly with a Super-Store, downtown districts lose foot traffic. This can result in a rash of business closures, a drop in property values, a loss of marketplace for local products, and a reduction in both charitable giving and civic involvement.

The Board unanimously supports the development of regulations to address large-scale retail development as outlined in the Growth Policy Action 6.2.6 as one facet of positive management of growth in our valley.

Sincerely,

*Clayton H. Ketchum*  
*Mr. [unclear]*  
*Jim Harding*

*James Cooper*  
*Vinny [unclear]*  
*[unclear]*

**PLANNING DEPARTMENT UPDATE**  
**FEBRUARY 23, 2006**

1. **INTERESTING NUGGET OF DATA:** For the 31 fast growing counties in west and central Montana – there has been a population increase of 45% between 1970 and 2004; however, there has been a 196% increase in acres developed for residential use during this same period. (Source: Sonoran Institute)
2. **REVIEW OF 2005**
  - a. Subdivision Review (see handout)
  - b. Exemptions
  - c. Wastewater treatment applications
  - d. Court Ordered splits
  - e. Floodplain Permits
  - f. Floodplain Determinations
  - g. All Violations (Sub, Zoning, FP)
3. **OUTSTANDING WORKLOAD FOR 2006**
  - a. Subdivision Review (see handout)
4. **KEY TRENDS:** More major subdivisions with more lots covering more acres. Typically this means more complicated review process.
5. **OVERVIEW OF KEY ISSUES**
  - a. **Office Administration**
    - i. Front Desk
    - ii. Personnel
    - iii. Overall budget
      1. 66% into the year
      2. Revenue – 73%
      3. Expenditures – 48%
  - b. **Regulatory Planning**
    - i. Subdivision – backlog, review of road plans
    - ii. Zoning – moving forward with Rippling Woods, new proposal for large commercial developments
    - iii. Floodplain
    - iv. Regulatory Revisions – October 1<sup>st</sup> deadline, road standards, design standards (memo from Planning Board)
  - c. **Long Range Planning Efforts**
    - i. Old Corvallis Road Area 3 Plan – Jan 24<sup>th</sup> presentation, public hearing March 8th (KH & JL)
    - ii. Water Course Setbacks (LH & new planner)
    - iii. Countywide Zoning – Staff will soon finish up research requested in 1/31 meeting. Need to set next meeting date. (KH & BH)
    - iv. Impact Fees – Report received and distributed. (KH & TR)
    - v. US Highway 93 Corridor Plan for Florence to Hamilton –Public meetings scheduled for March – request BCC participation. (RV & BH)
    - vi. Corvallis Sewer District Planning Assistance (RV & new planner)
    - vii. Water Quality Districts (EHD & LH)



- viii. Wetlands Delineation and Bitterroot Water Forum (LH & JL)
- ix. Right to Farm and Ranch -- Land Use Planning Tools (KH, RV & TR)
- x. Other
  - 1. Bitterroot Land Trust
  - 2. Sonoran Institute Growth Projections for Fast Growing Counties
  - 3. USFS Forest Plan Update
  - 4. US Highway 93 Corridor Plan for Missoula (Brooks/Reserve) to Florence -- Advisory Committee

**6. LEGAL ISSUES**

- a. Lawsuits
- b. Legislation from 2005 Session
- c. SJR 11



## Planning Department Update February 23, 2005 Handout

| Subdivision Activity during Calendar Years 1991- 2005 |                        |            |            |                |              |              |              |              |               |               |              |             |
|---|------------------------|------------|------------|----------------|--------------|--------------|--------------|--------------|---------------|---------------|--------------|-------------|
| Year  | Number of Subdivisions |            |            | Number of Lots |              |              |              | Acreage      |               |               |              | Variances** |
|   | Majors                 | Minors     | Total      | Majors         | Minors       | Total        | Lots/<br>Sub | Majors       | Minors        | Total         | Ac/<br>Lot   |             |
| 1991  | 2                      | 24         | 26         | 52             | 72           | 124          | 5            | 225          | 208           | 433           | 3.5          |             |
| 1992  | 4                      | 49         | 53         | 69             | 144          | 213          | 4            | 60           | 567           | 628           | 5.9          |             |
| 1993  | 12                     | 75         | 87         | 129            | 207          | 336          | 4            | 478          | 1420          | 1898          | 11.3         |             |
| 1994  | 12                     | 88         | 100        | 194            | 246          | 440          | 4            | 408          | 1631          | 2039          | 4.6          |             |
| 1995  | 14                     | 100        | 114        | 181            | 282          | 463          | 4            | 654          | 1837          | 2490          | 5.4          |             |
| 1996  | 8                      | 97         | 105        | 235            | 286          | 521          | 5            | 3408         | 1391          | 4800          | 9.2          |             |
| 1997  | 10                     | 49         | 59         | 136            | 159          | 295          | 5            | 744          | 1129          | 1873          | 6.3          |             |
| 1998  | 4                      | 50         | 54         | 48             | 147          | 195          | 4            | 245          | 880           | 1124          | 5.8          |             |
| 1999  | 8                      | 35         | 43         | 57             | 83           | 140          | 3            | 166          | 360           | 526           | 3.8          |             |
| 2000  | 8                      | 36         | 44         | 91             | 118          | 209          | 5            | 168          | 365           | 533           | 5.1          |             |
| 2001  | 6                      | 37         | 43         | 54             | 94           | 148          | 3            | 59           | 600           | 658           | 4.4          |             |
| 2002  | 3                      | 17         | 20         | 44             | 63           | 107          | 5            | 43           | 244           | 287           | 2.7          |             |
| 2003*   | 4                      | 21         | 25         | 137            | 57           | 194          | 8            | 86           | 284           | 370           | 1.9          |             |
| 2004  | 8                      | 42         | 50         | 166            | 121          | 287          | 6            | 185          | 520           | 705           | 2.5          | 45          |
| 2005  | 11                     | 18         | 29         | 303            | 51           | 354          | 12           | 661          | 185           | 846           | 4.8          | 41          |
| <b>Totals</b>   | <b>114</b>             | <b>738</b> | <b>852</b> | <b>1,896</b>   | <b>2,130</b> | <b>4,026</b> | <b>-----</b> | <b>7,589</b> | <b>11,621</b> | <b>19,209</b> | <b>-----</b> | <b>86</b>   |

\* In 2003, staff changed the way data is collected. Prior to this time, the subdivision totals were based on the number submitted during a calendar year, instead of the number that were acted upon during a calendar year.

\*\* Data is currently unavailable on variances prior to 2004.

### KNOWN OUTSTANDING SUBDIVISION WORKLOAD

| Type          | Number of<br>Applications<br>in Office | Variance<br>Requests | Number of<br>Lots | Number of<br>Acres |
|---------------|--|----------------------|-------------------|--------------------|
| Minor         | 27                                     | 15                   | 95                | 323                |
| Major         | 16                                     | 17                   | 1427              | 1233               |
| Variance Only | n/a                                    | 2                    |                   |                    |
| <b>Total</b>  | <b>45</b>                              | <b>32</b>            | <b>1522</b>       | <b>1556</b>        |